

REFERENCE TITLE: victims' rights; hearing; fees; status

State of Arizona
Senate
Forty-ninth Legislature
First Regular Session
2009

SB 1247

Introduced by
Senator Paton

AN ACT

AMENDING SECTIONS 8-382, 8-402, 8-418, 13-4401 AND 13-4422, ARIZONA REVISED STATUTES; RELATING TO VICTIMS' RIGHTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 8-382, Arizona Revised Statutes, is amended to
3 read:

4 8-382. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Accused" means a juvenile who is referred to juvenile court for
7 committing a delinquent act.

8 2. "Appellate proceeding" means any contested matter before the state
9 court of appeals, the state supreme court, a federal court of appeals or the
10 United States supreme court.

11 3. "Arrest" means the actual custodial restraint or temporary custody
12 of a person.

13 4. "Court" means the juvenile division of the superior court when
14 exercising its jurisdiction over children in any proceeding relating to
15 delinquency.

16 5. "Crime victim advocate" means a person who is employed or
17 authorized by a public entity or a private entity that receives public
18 funding primarily to provide counseling, treatment or other supportive
19 assistance to crime victims.

20 6. "Custodial agency" means any law enforcement officer or agency, a
21 sheriff, a county juvenile detention center, the department of juvenile
22 corrections or a secure mental health facility that has custody of a person
23 who is arrested or in custody for a delinquent or incorrigible offense.

24 7. "Delinquency proceeding" means any hearing, argument or other
25 matter that is scheduled or held by a juvenile court judge, commissioner or
26 hearing officer and that relates to an alleged or adjudicated delinquent
27 offense.

28 8. "Delinquent" means a child who is adjudicated to have committed a
29 delinquent act.

30 9. "Delinquent act" means an act to which this article applies
31 pursuant to section 8-381.

32 10. "Detention hearing" means the accused's initial appearance before
33 the court to determine release before adjudication.

34 11. "Final disposition" means the ultimate termination of the
35 delinquency proceeding by a court, including dismissal, acquittal, transfer
36 to adult court or imposition of a disposition after an adjudication for a
37 delinquent offense.

38 12. "Immediate family" means a victim's spouse, parent, child, sibling,
39 grandparent or lawful guardian.

40 13. "Juvenile defendant" means a juvenile against whom a petition is
41 filed seeking to have the juvenile adjudicated delinquent.

42 14. "Lawful representative" means a person who is designated by the
43 victim or appointed by the court and who will act in the best interests of
44 the victim.

1 15. "Postadjudication release" means release on probation, intensive
2 probation, work furlough, community supervision or home detention, release on
3 conditional liberty pursuant to section 41-2818 by the department of juvenile
4 corrections or any other permanent, conditional or temporary release from
5 confinement, discharge or completion of commitment by the department of
6 juvenile corrections, a sheriff, a municipal jail, a juvenile detention
7 center, a residential treatment facility or a secure mental health facility.

8 16. "Postadjudication review hearing" means a hearing that is held in
9 open court and that involves a request by the juvenile for review of a
10 disposition.

11 17. "Postarrest release" means the discharge of the accused from
12 confinement.

13 18. "Release" means no longer in the custody of the custodial agency
14 and includes transfer from one custodial agency to another custodial agency.

15 19. "Rights" means any right granted to the victim by the laws of this
16 state.

17 20. "Victim":

18 (a) Means a person against whom the delinquent act was committed, or
19 if the person is killed or incapacitated, the person's spouse, parent, child,
20 grandparent or sibling, any other person related to the person by
21 consanguinity or affinity to the second degree or any other lawful
22 representative of the person. ~~, except if~~

23 (b) DOES NOT INCLUDE the person or the person's spouse, parent, child,
24 grandparent, sibling, other person related to the person by consanguinity or
25 affinity to the second degree or other lawful representative IF THE PERSON
26 EITHER:

- 27 (i) Is in custody for an offense. ~~or~~
28 (ii) Is the accused.

29 (iii) ACTED IN CONCERT WITH THE DEFENDANT TO COMMIT AN OFFENSE LISTED
30 IN SECTION 13-1105, SUBSECTION A, PARAGRAPH 2, THAT ACT RESULTED IN THE
31 PERSON'S DEATH AND THE DEFENDANT IS CHARGED WITH FIRST DEGREE MURDER PURSUANT
32 TO SECTION 13-1105, SUBSECTION A, PARAGRAPH 2.

33 Sec. 2. Section 8-402, Arizona Revised Statutes, is amended to read:

34 8-402. Postarrest detention decisions; hearing

35 A. The victim has the right to be heard at any proceeding in which the
36 court considers the postarrest release of the juvenile accused of committing
37 a delinquent act against the victim, ~~or~~ the conditions of that release OR
38 MODIFICATIONS TO THE CONDITIONS OF THAT RELEASE.

39 B. IF A WRITTEN MOTION IS FILED THAT REQUESTS THE COURT TO CONSIDER
40 THE POSTARREST RELEASE OF A JUVENILE OR MODIFICATIONS TO THE CONDITIONS OF
41 THAT RELEASE, THE VICTIM MAY REQUEST A HEARING AND, ON REQUEST, THE COURT
42 SHALL GRANT THE HEARING, AND THE VICTIM HAS THE RIGHT TO BE HEARD AT THAT
43 HEARING.

1 Sec. 3. Section 8-418, Arizona Revised Statutes, is amended to read:

2 **8-418. Implementation fee; definition**

3 A. For all juveniles adjudicated delinquent for offenses involving a
4 victim, including those who are adjusted pursuant to section 8-321, the court
5 or, in the case of an adjustment pursuant to section 8-321, a juvenile
6 probation officer shall assess the parent of a delinquent a fee of
7 twenty-five dollars unless the parent or a sibling of the juvenile is the
8 victim or unless, after determining the inability of the parent to pay the
9 fee, the court or juvenile probation officer assesses a lesser amount.
10 Monies assessed pursuant to this section shall be paid to the clerk of the
11 superior court. Within ten working days of the last day of each month the
12 clerk of the superior court shall transmit all monies collected from this
13 assessment to the state treasurer for deposit in the victims' rights fund
14 established by section 41-191.08.

15 **B. THE COURT SHALL ASSESS THE FEE UNDER SUBSECTION A OF THIS SECTION**
16 **AGAINST ALL DISMISSED OR AMENDED CHARGES INVOLVING A VICTIM IF THE JUVENILE**
17 **ENTERS INTO A PLEA AGREEMENT FOR ANY CRIMINAL OFFENSE AND IS ADJUDICATED**
18 **DELINQUENT OR ADJUSTED PURSUANT TO SECTION 8-321.**

19 **C.** For the purposes of this section, "victim" includes persons,
20 corporations, partnerships, businesses, associations and other legal
21 entities.

22 Sec. 4. Section 13-4401, Arizona Revised Statutes, is amended to read:

23 **13-4401. Definitions**

24 In this chapter, unless the context otherwise requires:

25 1. "Accused" means a person who has been arrested for committing a
26 criminal offense and who is held for an initial appearance or other
27 proceeding before trial.

28 2. "Appellate proceeding" means any contested matter before the state
29 court of appeals, the state supreme court, a federal court of appeals or the
30 United States supreme court.

31 3. "Arrest" means the actual custodial restraint of a person or the
32 person's submission to custody.

33 4. "Court" means all state, county and municipal courts in this state.

34 5. "Crime victim advocate" means a person who is employed or
35 authorized by a public entity or a private entity that receives public
36 funding primarily to provide counseling, treatment or other supportive
37 assistance to crime victims.

38 6. "Criminal offense" means conduct that gives a peace officer or
39 prosecutor probable cause to believe that one of the following has occurred:

40 (a) A felony.

41 (b) A misdemeanor involving physical injury, the threat of physical
42 injury or a sexual offense.

1 7. "Criminal proceeding" means any hearing, argument or other matter
2 that is scheduled by and held before a trial court but does not include any
3 deposition, lineup, grand jury proceeding or other matter that is not held in
4 the presence of the court.

5 8. "Custodial agency" means any law enforcement officer or agency, a
6 sheriff or municipal jailer, the state department of corrections or a secure
7 mental health facility that has custody of a person who is arrested or in
8 custody for a criminal offense.

9 9. "Defendant" means a person or entity that is formally charged by
10 complaint, indictment or information of committing a criminal offense.

11 10. "Final disposition" means the ultimate termination of the criminal
12 prosecution of a defendant by a trial court, including dismissal, acquittal
13 or imposition of a sentence.

14 11. "Immediate family" means a victim's spouse, parent, child, sibling,
15 grandparent or lawful guardian.

16 12. "Lawful representative" means a person who is designated by the
17 victim or appointed by the court and who acts in the best interests of the
18 victim.

19 13. "Post-arrest release" means the discharge of the accused from
20 confinement on recognizance, bond or other condition.

21 14. "Post-conviction release" means parole, work furlough, community
22 supervision, probation if the court waived community supervision pursuant to
23 section 13-603, home arrest or any other permanent, conditional or temporary
24 discharge from confinement in the custody of the state department of
25 corrections or a sheriff or from confinement in a municipal jail or a secure
26 mental health facility.

27 15. "Post-conviction relief proceeding" means a contested argument or
28 evidentiary hearing that is held in open court and that involves a request
29 for relief from a conviction or sentence.

30 16. "Prisoner" means a person who has been convicted of a criminal
31 offense against a victim and who has been sentenced to the custody of the
32 sheriff, the state department of corrections, a municipal jail or a secure
33 mental health facility.

34 17. "Release" means no longer in the custody of a custodial agency and
35 includes transfer from one custodial agency to another custodial agency.

36 18. "Rights" means any right that is granted to the victim by the laws
37 of this state.

38 19. "Victim":

39 (a) Means a person against whom the criminal offense has been
40 committed, including a minor, or if the person is killed or incapacitated,
41 the person's spouse, parent, child, grandparent or sibling, any other person
42 related to the person by consanguinity or affinity to the second degree or
43 any other lawful representative of the person. ~~, except if~~

1 (b) DOES NOT INCLUDE the person or the person's spouse, parent, child,
2 grandparent, sibling, other person related to the person by consanguinity or
3 affinity to the second degree or other lawful representative IF THE PERSON
4 EITHER:

- 5 (i) Is in custody for an offense. ~~or~~
6 (ii) Is the accused.

7 (iii) ACTED IN CONCERT WITH THE DEFENDANT TO COMMIT AN OFFENSE LISTED
8 IN SECTION 13-1105, SUBSECTION A, PARAGRAPH 2, THAT ACT RESULTED IN THE
9 PERSON'S DEATH AND THE DEFENDANT IS CHARGED WITH FIRST DEGREE MURDER PURSUANT
10 TO SECTION 13-1105, SUBSECTION A, PARAGRAPH 2.

11 Sec. 5. Section 13-4422, Arizona Revised Statutes, is amended to read:
12 13-4422. Post-arrest custody decisions; hearing

13 A. The victim has the right to be heard at any proceeding in which the
14 court considers the post-arrest release of the person accused of committing a
15 criminal offense against the victim, ~~or~~ the conditions of that release OR
16 MODIFICATIONS TO THE CONDITIONS OF THAT RELEASE.

17 B. IF A WRITTEN MOTION IS FILED THAT REQUESTS THE COURT TO CONSIDER
18 THE POSTARREST RELEASE OF A PERSON OR MODIFICATIONS TO THE CONDITIONS OF THAT
19 RELEASE, THE VICTIM MAY REQUEST A HEARING AND, ON REQUEST, THE COURT SHALL
20 GRANT THE HEARING, AND THE VICTIM HAS THE RIGHT TO BE HEARD AT THAT HEARING.